

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lara Hidalgo	Team: Team # 5	CCRB Case #: 200818051	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 12/14/2008 2:00 AM	Location of Incident: Nostrand Avenue and Shore Parkway; 78th Precinct stationhouse	Precinct: 61	18 Mo. SOL 6/14/2010	EO SOL 6/14/2010	
Date/Time CV Reported Mon, 12/15/2008 4:20 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 12/15/2008 4:20 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Curtis Valley	21488	927622	PBBS TF
2. POM Kevin Thomas	24437	942919	PBBS TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Timothy Foder	05383	933783	PBBS TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Curtis Valley	Discourtesy: PO Curtis Valley spoke obscenely and/or rudely to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Kevin Thomas	Off. Language: PO Kevin Thomas made remarks to § 87(2)(b) [REDACTED] based upon race.	[REDACTED]

Synopsis

On December 14, 2008, at approximately 2:30am, § 87(2)(b)'s vehicle was pulled over at the intersection of Nostrand Avenue and Shore Parkway in Brooklyn by Officer Curtis Valley and Officer Timothy Foder, who observed § 87(2)(b) drive through a steady red light. On stopping § 87(2)(b) Officer Valley and Officer Foder observed that § 87(2)(b) was unsteady on his feet, smelled strongly of alcohol and exhibited an agitated and antagonistic demeanor. § 87(2)(b) refused the breathalyzer test and was arrested for driving while intoxicated and violating a traffic light. When § 87(2)(b) asked why the officers were going through his belongings, Officer Valley allegedly spoke rudely to § 87(2)(b) calling him a "wiseass". § 87(2)(b) was transported to the 78th Precinct stationhouse, where he refused the intoxilyzer test. § 87(2)(b) claimed that Officer Kevin Thomas, who interacted with § 87(2)(b) at the 78th Precinct stationhouse, made offensive remarks to him based on race, calling him "a rich white boy from Battery Park".

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old white male who works as § 87(2)(b), stands at 6'1" and weighs approximately 250 pounds, filed a complaint online with the CCRB on December 15, 2008 (encl. 5a-d). § 87(2)(b) provided a telephone statement on December 22, 2008 (encl. 7a-b) and a verified, in-person statement on January 7, 2009 (encl. 8a-f). § 87(2)(g)

It should also be noted that § 87(2)(b) consistently stated that he interacted with the same two black male officers for the duration of the incident, which spans the initial stop, his time at the 78th Precinct stationhouse and Central Booking; however, the investigation determined that § 87(2)(b) primarily interacted with three officers, two of whom were black and one of whom was clearly white.

On December 14, 2008 at approximately 2:00am, § 87(2)(b) made a left turn from Emmons Avenue onto Nostrand Avenue in Brooklyn and was pulled over by two black male uniformed police officers. Although § 87(2)(b) stated that he was pulled over at the intersection of Emmons Avenue and Nostrand Avenue, the investigation determined that he was pulled over near the intersection of Nostrand Avenue and Shore Parkway. One of the black male officers who stopped § 87(2)(b)'s vehicle was identified through investigation as Officer Curtis Valley; however, it was determined that the second "black" male officer who pulled § 87(2)(b) over was Officer Valley's partner that day, Officer Timothy Foder, who is clearly a white male. Officer Valley and Officer Foder were driving a black Impala, and Officer Valley was operating. § 87(2)(b) was coming from a holiday office party at § 87(2)(b) and was driving an unidentified young male to the Q train. The unidentified young male, whose first name may have been § 87(2)(b) worked for the same company as § 87(2)(b) but they had never met before that night at the office party. Beginning at approximately 7:30pm that night, § 87(2)(b) consumed about three alcoholic drinks, including wine spritzers and beer, but stopped drinking at 9:00pm after calling his wife to have her extend his car rental return from 11:00pm to 2:00am, as he did not want to run the risk of being pulled over for drunk driving. § 87(2)(b) and the young male passenger left the holiday party some time after midnight and drove to the Neptune Diner, but as it was full when they arrived, they proceeded in the direction of the Q train.

§ 87(2)(b) saw lights flashing behind him as soon as he made the left turn onto Nostrand Avenue and immediately pulled over to the right. Officer Valley, described by § 87(2)(b) as a black male, about 5'10", 185 pounds, medium build, dressed in uniform and an NYPD sweater vest, sideburns, no glasses, mid-30s, who had been operating the Impala, approached the front door driver's side of the vehicle. Officer Foder, described by § 87(2)(b) as a black male (but determined through investigation to be a white male), 6'1", 250 pounds, marine-style haircut, short on sides and higher on top, dressed in uniform, late 20s or early 30s, no facial hair or glasses (this is a relatively accurate description of Officer Kevin Thomas, with whom § 87(2)(b) did not interact until later at the stationhouse), approached the passenger side of the

vehicle. § 87(2)(b) rolled down his window and asked Officer Valley if there was a reason he was being stopped. Officer Valley replied that § 87(2)(b) had pulled through a steady red light, to which § 87(2)(b) replied that he had not and that the light had been steady green. Officer Valley exclaimed that § 87(2)(b) must be really drunk, and § 87(2)(b) contested that he was not drunk. Officer Valley instructed him to blow into a device used for administering the breathalyzer test, and § 87(2)(b) refused, stating that he would not do so without an attorney present. During this time, Officer Foder spoke with § 87(2)(b)'s passenger and asked him a few questions.

Officer Valley told § 87(2)(b) to step out of the car and asked him again if he would take the test, to which § 87(2)(b) replied that he would take the test only with a lawyer present at the stationhouse. In his initial complaint, § 87(2)(b) claimed that this officer called him “a fancy playboy with a hot whip”, but did not repeat this in either his telephone or CCRB statement. Officer Valley told § 87(2)(b) to come around to the front of the vehicle and empty his pockets, and § 87(2)(b) complied, emptying his personal belongings, including a wallet and house keys, on the hood of the rental car. Officer Valley and Officer Foder began to sift through § 87(2)(b) wallet, counting his money and questioning § 87(2)(b) about the Monopoly money contained therein, which § 87(2)(b) had received at the holiday office party. Officer Valley said that § 87(2)(b) had \$280.00 in his wallet. § 87(2)(b) asked Officer Foder why they were counting his money and looking at his credit cards, and Officer Valley responded, “Oh, you’re a real wiseass aren’t you?”. § 87(2)(b) failed to mention that Officer Valley called him a wiseass in his initial complaint, and in his telephone statement, claimed that officers asked him, “What are you, a wiseass?” § 87(2)(b) stated that he did not understand why they were going through all of his things when he had not even been charged with anything. Officer Valley said to lock him up, and the two officers escorted him to the rear of the Impala. § 87(2)(b) requested that the officers handcuff him in front, explaining that he would be fully cooperative, was not a violent felon and asserting, “We could work this out”.

Officer Valley and Officer Foder told § 87(2)(b) to turn around so that they could handcuff him. As one officer pushed him down, his hand pressing the middle of § 87(2)(b)'s upper back against the trunk of the Impala, another officer handcuffed him tightly. § 87(2)(b) could not discern which officer pushed him down and which officer handcuffed him, as the side of his face was pressed flat against the trunk. He explained to the officers that he was receiving worker’s compensation for a knee injury requiring surgery, and the officers replied that was too bad and instructed him to get in the back of the car. § 87(2)(b) complained that, due to his large size and the fact that the driver’s seat of the Impala was pushed all the way back, he had to stand in the back facing the rear windshield in order to fit in the car. The officers repeatedly accelerated and decelerated, causing § 87(2)(b) a great deal of discomfort from the sheer force of his body weight jostling with every bend or break in the road. When § 87(2)(b) asked them to slow down, they laughed.

§ 87(2)(b) was transported to the 78th Precinct and placed in a holding cell with other prisoners, none of whom were handcuffed. § 87(2)(b) asked for a lawyer, to have his handcuffs removed, to make a phone call, have a glass of water and go to the bathroom but was refused. After about an hour of yelling in the holding cell, just as the sun was coming up, an officer § 87(2)(b) believed to be the desk sergeant, described by him as a white male, 5’10”, medium build, uniformed, black hair, no facial hair, no glasses, about 30 years old, came and said that his handcuffs should be removed. By that time, § 87(2)(b)'s hands were numb and red from the pressure exerted by the handcuffs.

A few hours later, Officer Valley and an officer who § 87(2)(b) believed to be the same officer who pulled him over with Officer Valley, described by § 87(2)(b) as a black male in uniform, 6’1”, 250 pounds, marine-style haircut, short on sides and higher on top, late early to early 30s, no facial hair or glasses, identified through investigation as Officer Kevin Thomas, returned to the holding cell and took § 87(2)(b) to another room. On the way there, § 87(2)(b) told Officer Valley that he was going to file a complaint. Officer Valley jumped in front of him and told him to take down his shield number, at which point § 87(2)(b) identified Officer Valley by the name on his nameplate. Once inside the room, Officer Valley and Officer Thomas told him to admit to the camera that he had been drinking the night before. § 87(2)(b) told them that he had been willing to cooperate in the beginning, but that they never allowed him to call a lawyer, make a phone call or go to the bathroom. Officer Valley and Officer Thomas “belittled” him and tried to intimidate him into admitting that he had been drinking. At one point, Officer Thomas allegedly

called § 87(2)(b) a “rich white boy from Battery Park”. § 87(2)(b) originally said that Officer Thomas made this comment in this room; however, when asked later in the CCRB interview to specify the context of the conversation in which this comment was made, he failed to do so and said that Officer Thomas said this to him “through the gate”, indicating that the comment was made while § 87(2)(b) was in the holding cell. In his initial complaint, § 87(2)(b) stated that the officers called him “a rich spoiled white boy from Battery Park”, and in his telephone statement, § 87(2)(b) claimed that Officer Thomas called him a “fat old man, a rich white boy from Battery Park” while he was in the holding cell. § 87(2)(b) told them that they suspected him of drinking and driving and were treating him as though he were a murderer, and that he was not going to take any of the tests unless a lawyer was present because his uncle, who is an attorney, had in a previous conversation instructed him to have a lawyer present for the test were he ever to be pulled over for drunk driving. Officer Valley and Officer Thomas told him that they were “going to make this rough on him” and took him back to the holding cell.

A couple hours later, § 87(2)(b) was transported to Central Booking with another prisoner, to whom he was handcuffed. At Central Booking he was photographed and placed in a large holding cell with 35 other prisoners, 10 of whom he recognized from the precinct holding cell. Officer Thomas made numerous comments about § 87(2)(b)'s weight. After placing § 87(2)(b) in the holding cell, Officer Valley and Officer Thomas handed him his wallet, told him to have fun and walked away smiling. § 87(2)(b) felt threatened because he was the only white male in a holding cell full of Hispanic and black prisoners and was wearing a dress suit. One of the prisoners later harassed him and asked him for money. He complained that he had still not been given anything to eat. Just before dinner he was taken to another area within Central Booking, where he waited to see the judge and was denied food.

Around 10:00pm, § 87(2)(b) appeared before the judge, who told him that he would have to see a counselor to determine whether or not he had an alcohol abuse problem. § 87(2)(b) was released and a couple days later, visited a counselor who determined that he did not need to join an alcohol assistance program.

On § 87(2)(b), § 87(2)(b) appeared for a mandatory motor vehicle hearing but Officer Valley and Officer Foder did not show up. § 87(2)(b)'s license was reinstated and deemed renewable. His next court appearance is scheduled for § 87(2)(b) (encl. 151).

Results of Investigation

WITNESSES NOT INTERVIEWED

§ 87(2)(b)'s unidentified male passenger was not interviewed. § 87(2)(b) believed that his first name may have been § 87(2)(b) but did not know his last name; § 87(2)(b) had just met him at the holiday office party. Although he and § 87(2)(b) worked for the same company and § 87(2)(b) believed that he could have obtained his name and contact information through mutual coworkers, § 87(2)(b) did not wish to contact him, because he did not want to bring this incident to the attention of his coworkers.

POLICE OFFICER STATEMENTS

Officer Curtis Valley, Patrol Borough Brooklyn South Task Force (Subject Officer)

Memo Book

Officer Curtis Valley did have entries in his memo book regarding this incident (encl. 9a-b): 2:30am, Car stopped at Nostrand Avenue and Shore Parkway, 2:45am, One individual arrested, 3:15am, Arrived at the 78th Precinct stationhouse, 5:44am, Individual refused IDTU, 7:30am, Faxed paperwork, 9:45am, Individual transported to Brooklyn Central Booking, 9:57am, Ready time, 10:45am, Resumed patrol from Brooklyn Central Booking.

Arresting Officer's Report – IDTU

The *Arresting Officer's Report – IDTU* (encl. 9g) indicates that Officer Curtis Valley of the Patrol Borough Brooklyn South Task Force, who arrested § 87(2)(b) on November 14, 2008 at 2:45am, was the IDTU technician and completed all the steps required for administering the Intoxicated Driver Testing Unit: Officer Valley verified that the intoxilyzer and the simulator were already on and that the subject was under direct observation for at least 20 minutes prior to obtaining of the breath sample(s), did not have anything to eat, drink or smoke and did not vomit, regurgitate or belch during the 20 minute period preceding the test or during the test. Officer Valley observed that the display showed, "CMI INC. INTOXILYZER ALCOHOL ANALYZER 5000" and pushed the button to verify the time and date. Officer Valley checked that the temperature of the simulator corresponded to 34 degrees Celsius. He pushed the green start test button, observed that the display showed, "AIR BLANK", "CAL. CHECK", "AIR BLANK", "PLEASE BLOW INTO THE MOUTHPIECE UNTIL TONE STOPS". Officer Valley checked off that he secured a breath sample from the subject, observed "AIR BLANK", finished the input and completed the test. The simulator used was number DR2554 of model "Intoxilyzer 5000", which was certified by the lab. The test results were "refused", and the time of refusal was 5:44am. Officer Kevin Thomas of the Patrol Borough Brooklyn South Task Force was listed as the witnessing officer.

Intoxicated Driver Examination Instruction Sheet

The *Intoxicated Driver Examination Instruction Sheet* (encl. 9h) indicates that arresting Officer Valley was about to offer a breath test to § 87(2)(b) at 5:44am on December 14, 2008. Officer Thomas served as the camera technician, and the test was conducted at the 78th Precinct.

Chemical Test Analysis

The *Chemical Test Analysis* (encl. 9i) shows that § 87(2)(b) who was arrested by Officer Valley on December 14, 2008, refused the Intoxilyzer 5000 test at 5:44am on December 14, 2008. Officer Valley signed and certified that this report was true.

Intoxilyzer – Alcohol Analyzer

The Intoxilyzer – Alcohol Analyzer (encl. 9j) shows that § 87(2)(b) arrested by Officer Valley at 2:45am on December 14, 2008, was not administered a field test, a breath test, a blood test or a urine test, because he refused. § 87(2)(b) was not involved in an accident and his car was not seized.

Report of Refusal To Submit To Chemical Test

In the *Report of Refusal To Submit To Chemical Test* (encl. 9k), Officer Valley, who arrested § 87(2)(b) on December 14, 2008 at the intersection of Nostrand Avenue and Shore Parkway, verified that he had reasonable ground to make the arrest based on his observation that § 87(2)(b) drove through a steady red light, had the odor of alcohol on his breath and appeared unsteady on his feet. § 87(2)(b) was driving a vehicle license plate number § 87(2)(b).

Intoxicated Driver Examination (Arresting Officer)

The *Intoxicated Driver Examination* (encl. 9m), completed by Officer Curtis Valley of the Patrol Borough Brooklyn South Task Force, indicates that Officer Valley observed § 87(2)(b) to have a strong odor of alcohol on his breath, a flushed facial color, clothes that appeared disorderly, an antagonistic and talkative attitude, was using profanity, was sagging in his balance and was slurring his speech. § 87(2)(b) refused to answer the questions on the second page of the Intoxicated Driver Examination. He did not require medical treatment and did not desire an ambulance to be summoned. Officer Valley concluded that § 87(2)(b) was under the influence of alcoholic beverages/drugs.

Highway District – IDTU Technician Test Report

The *Highway District – IDTU Technician Test Report* (encl. 9n) shows that § 87(2)(b) refused the coordination test. Arresting Officer Curtis Valley concluded that § 87(2)(b) was under the influence of intoxicating beverages/drugs.

CCRB Interview

Officer Curtis Valley, a § 87(2)(b)-old black male who stands at 5'8" and weighs 179 pounds, was interviewed at the CCRB on February 5, 2009 (encl. 9o-p).

On December 14, 2008, Officer Valley worked from 10:00pm until 2:00pm the next day. Officer Valley was patrolling the 61st Precinct with Officer Foder. They were in RMP number 1308 and Officer Valley was in uniform.

On December 14, 2008 at approximately 2:30am, Officer Valley, who was operating marked vehicle number 1308, stopped a mini-Cooper. He did not recall specifically why he stopped the mini-Cooper, but believed it was for running a red light. Officer Valley observed § 87(2)(b) first and made the decision to pull him over. Officer Valley and Officer Foder exited their vehicle at the same time. Officer Valley approached § 87(2)(b)'s vehicle from the driver's side and Officer Foder approached the passenger's side. Officer Valley spoke to § 87(2)(b) first, asking him for his license and to exit the vehicle. There was a passenger seated in the front passenger's side of the vehicle, who left the scene about five minutes after the stop. Officer Valley did not speak to the passenger and did not believe that his partner Officer Foder spoke to the passenger.

As soon as § 87(2)(b) opened the door of the mini-Cooper, Officer Valley noticed a strong odor of alcohol. Upon exiting, § 87(2)(b) was unsteady on his feet. Officer Valley described § 87(2)(b)'s demeanor as obnoxious and belligerent. § 87(2)(b) reportedly threatened Officer Valley's job, stating that he would get him fired because he knew Ray Kelly. Officer Valley asked him to take a breathalyzer test, and when § 87(2)(b) refused, Officer Valley placed him under arrest. § 87(2)(b) stated that he did not want to take the test because he was not drunk. Officer Valley frisked § 87(2)(b) and searched inside his side pants pockets. He removed some paper and poker chips, but there was no cash. He then handcuffed him with two pairs of handcuffs. Officer Valley did not recall § 87(2)(b) asking to be handcuffed in front. § 87(2)(b) was then placed in the back of the patrol car and transported to the 78th Precinct. On the way there, § 87(2)(b) continued to talk and complain, but Officer Valley ignored him and was not conscious of what he was saying.

At the 78th Precinct stationhouse, § 87(2)(b)'s handcuffs were removed, his belongings stowed, and he was frisked and placed in a holding cell. Officer Valley did not recall who removed § 87(2)(b)'s handcuffs or who placed him in the holding cell. About half an hour after § 87(2)(b) was placed in the holding cell, Officer Valley, who at the time was about two rooms away from the cell, heard him yelling and kicking the wall. A couple times Officer Valley had to come over to ask § 87(2)(b) to stop. He stated that the other inmates may have been acting up as well but did not recall specifically how. A few hours after arriving at the 78th Precinct, Officer Valley took § 87(2)(b) to another room across the hall in order to administer the IDTU, or Intoxicated Driver Testing Unit, also known as the breathalyzer test. At that point, § 87(2)(b)'s handcuffs were replaced. § 87(2)(b) again refused to take the test because he was not drunk. He also refused to take the coordination test. § 87(2)(b) was then taken back to the holding cell, and some time later, transported to Brooklyn Central Booking. § 87(2)(b) did not have any interactions with the sergeant at the 78th Precinct stationhouse.

Officer Valley stated that he did not make any comments about § 87(2)(b)'s weight and was unaware of another officer making comments about his weight. He did not call § 87(2)(b) a "wiseass" or hear another officer refer to him as such. At no point did Officer Valley call § 87(2)(b) a "rich white boy from Battery Park" or hear another officer do so.

Officer Timothy Foder, Patrol Borough Brooklyn South Task Force (Witness Officer)

Memo Book

Officer Timothy Foder did have entries in his memo book regarding this incident (encl. 11a-b): 2:35am, stopped one car at Nostrand Avenue and Shore Parkway, 2:45am, one individual arrested in regards to the car stop, resumed patrol to the 78th Precinct for Driving While Intoxicated.

CCRB Interview

Officer Timothy Foder, a white male who stands at 5'10" and weighs approximately 220 pounds, was interviewed at the CCRB on February 11, 2009 (encl. 11c-e).

On December 14, 2008, Officer Timothy Foder worked from 10:00pm until 6:35am. Officer Foder was assigned to patrol the 72nd Precinct with Officer Curtis Valley. They were in marked vehicle number 1308 and Officer Foder was dressed in uniform.

Officer Timothy Foder and Officer Curtis Valley were patrolling the 72nd Precinct when they simultaneously witnessed § 87(2)(b) drive through a red light at the intersection of Nostrand Avenue and Shore Parkway in Brooklyn. Without engaging in any discussion, either Officer Foder or Officer Valley illuminated their vehicle's turret lights, signaling to § 87(2)(b) to pull over. § 87(2)(b) complied within a reasonable amount of time. A minute or two passed between the time Officer Foder and Officer Valley initially observed § 87(2)(b) run the red light and when they exited their vehicle to approach him.

Officer Foder and Officer Valley simultaneously exited their vehicle and approached § 87(2)(b). Officer Valley from the driver's side and Officer Foder from the passenger's side. Officer Foder remarked that § 87(2)(b)'s demeanor from the moment of the officers' initial interaction with him was agitated, intoxicated and upset. § 87(2)(b) demonstrated this agitation by pressing his foot repeatedly on the gas of his car, which was in park mode, causing it to backfire. § 87(2)(b)'s intoxicated state was apparent in the strong odor of alcohol that emanated from his breath and his body.

A passenger, seated on the front passenger's side of the vehicle, was also present, but Officer Foder did not recall having any sort of interaction with the passenger and did not ask for his name. Officer Foder did recall that the passenger at some point declined to park § 87(2)(b)'s vehicle, stating that he did not really know § 87(2)(b) and had just met him at a party they were coming from.

Officer Valley asked § 87(2)(b) to step out of the car and he complied. Although Officer Foder initially stated that Officer Valley tested him on the scene with the Portable Breathalyzer Test, when questioned later in the interview specifically as to whether or not § 87(2)(b) complied with the breathalyzer test, Officer Foder stated that he did not recall. Officer Valley placed § 87(2)(b) under arrest, patted him down and handcuffed him in an upright position between the police car and the back of § 87(2)(b)'s car. Officer Valley removed personal items from § 87(2)(b)'s pockets. Officer Foder did not recall § 87(2)(b) protesting the search and removal of items from his pockets. Officer Valley placed § 87(2)(b) in the back of the police vehicle, and Officer Foder sat with § 87(2)(b) in the vehicle while Officer Valley parked § 87(2)(b)'s car. Officer Foder noticed that § 87(2)(b) was causing the entire car to reek of alcohol.

On the way to the 78th Precinct stationhouse, § 87(2)(b) rambled and complained. Officer Valley did not recall specifically what § 87(2)(b) was saying aside from the fact that he was complaining about not being able to fit properly in the back of the car due to his size. When Officer Foder was questioned as to whether or not he made any derogatory comments concerning § 87(2)(b)'s weight, he stated that he did not and that he did not consider § 87(2)(b) to be large in size but rather stature. At the stationhouse, Officer Valley and Officer Foder brought § 87(2)(b) to the back. He was then placed in the holding cell and his handcuffs were removed. Officer Foder did not recall who actually placed him in the holding cell or removed his handcuffs.

Officer Foder only remained at the 78th Precinct stationhouse with Officer Valley for about an hour prior to returning to Brooklyn South Task Force for a meal. He was not present when the Intoxicated Driver Testing Unit (IDTU) was administered and was not in the area of the holding cells or in close

proximity to § 87(2)(b) during the hour that he remained at the 78th Precinct stationhouse. He did not hear any sort of commotion or kicking coming from § 87(2)(b) during this time, and did not recall where he was or what he was doing. Officer Foder did not know specifically what Officer Valley was doing, but believed that he may have been completing the arrest paperwork for § 87(2)(b). Officer Foder did not know when the IDTU was conducted, and stated that this generally depends on how backed up the precinct is.

Officer Foder did not recall § 87(2)(b) being called a “wiseass” by either himself or his partner. When questioned specifically as to whether or not he or his partner called § 87(2)(b) a “wiseass”, Officer Foder said no. Officer Foder did not call § 87(2)(b) a “rich white boy from Battery Park”. He added that he did not know where § 87(2)(b) was from. Officer Foder did not at any point hear Officer Valley or any other officer call § 87(2)(b) a “rich white boy from Battery Park”.

Officer Kevin Thomas, Patrol Borough Brooklyn South Task Force (Subject Officer)

Memo Book

Officer Kevin Thomas did not have any entries in his memo book regarding this incident (encl. 10a-b).

CCRB Interview

Officer Kevin Thomas, a § 87(2)(b)-old black male who stands at 6’0” and weighs approximately 220 pounds, was interviewed at the CCRB on February 5, 2009 (encl. 10c-d).

On December 14, 2009, Officer Thomas worked from 10:00pm until 1:50pm the next day. Officer Thomas was assigned to patrol the 72nd Precinct of the Brooklyn South Task Force with Officer Domingo Isasi. They were in marked motor vehicle number 2793 and Officer Thomas was dressed in plainclothes.

Officer Kevin Thomas was not present on the scene at the time of § 87(2)(b)’s arrest at the intersection of Emmons Avenue and Nostrand Avenue in Brooklyn. Officer Thomas’s interactions with § 87(2)(b) were limited to their encounters at the 78th Precinct stationhouse. Officer Thomas was at the 78th Precinct stationhouse processing the arrest of another individual he had arrested on suspicion of DUI at the intersection of 38th Street and 3rd Avenue in Brooklyn.

At the 78th Precinct stationhouse, Officer Thomas noticed alcohol fumes emanating from § 87(2)(b)’s body when he placed him in the holding cell. He also observed that § 87(2)(b) was unbalanced and exhibited poor coordination. § 87(2)(b) was consistently disrespectful to Officer Thomas over the course of a series of interactions they shared. When Officer Thomas placed § 87(2)(b) in the holding cell, § 87(2)(b) muttered “nigger” under his breath and insisted that Officer Thomas was “done” because § 87(2)(b) knew Ray Kelly. § 87(2)(b) claimed that he had done some construction jobs with Ray Kelly and that they lived across the street from one another.

When Officer Thomas attempted to fingerprint § 87(2)(b) resisted by quickly retracting his fingers from the fingerprinting machine. He repeatedly asked Officer Thomas how he knew that he was drunk. Officer Thomas attempted to calm § 87(2)(b) down over the course of about 8-10 minutes by telling him that if he continued to refuse to be fingerprinted, he would remain in the system longer (One cannot be arraigned until one has been fingerprinted). Over the course of the night, § 87(2)(b) stood at the bars, yelling “You’re done, you’re done” and pointing at Officer Thomas. At one point the desk sergeant came over to see what was going on because § 87(2)(b) was being so loud. The desk sergeant stuck his head in the holding cell but did not say anything to § 87(2)(b).

When Officer Thomas transported § 87(2)(b) to Central Booking, he calmed down a bit but continued to repeat, “You’re done, you’re done” to Officer Thomas. At Central Booking, § 87(2)(b) asked Officer Thomas for his name and shield number, which Officer Thomas provided both verbally and by motioning towards his badge.

Officer Thomas did not call § 87(2)(b) a wiseass or hear another officer call him a wiseass. He did not call § 87(2)(b) a “rich white boy from Battery Park”, nor did he hear another officer say this to § 87(2)(b). Furthermore, Officer Thomas did not make any comments directed at § 87(2)(b) concerning his weight, or hear another officer do so.

POLICE DOCUMENTS

SPRINT #N02905

SPRINT #N02905 (encl. 12a), regarding a suspicious vehicle outside, was generated by officers from the 61st Precinct task force at 2:44am on December 14, 2008. At 2:45am, 61st Precinct task force officers reported a crime arrest, stated one under and requested verification of the arrest. At 2:46am, 61st Precinct task force officers stated that they were going to the 78th Precinct and did not need highway officers to respond.

CRIMINAL CONVICTION HISTORY

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CIVILIAN CCRB HISTORIES

This is the first complaint § 87(2)(b) has filed with the CCRB (encl. 3a).

OFFICER CCRB HISTORIES

In the course of Officer Curtis Valley’s eight-year tenure with the New York Police Department, there have been no substantiated allegations brought against him that resulted in discipline (encl. 2a).

In the course of Officer Kevin Thomas’s two-year tenure with the New York Police Department, there have been no substantiated allegations brought against him that resulted in discipline (encl. 2b).

Conclusions and Recommendations

OFFICER IDENTIFICATION

§ 87(2)(b) alleged that an officer who he described as black male, about 5’10”, 185 pounds, medium build, dressed in uniform and an NYPD sweater vest, sideburns, no glasses, mid-30s, who was operating, said to him, “Oh, you’re a real wiseass aren’t you” (Allegation A). § 87(2)(b) later identified this officer by name on nameplate as Officer Valley. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that an officer at the 78th Precinct stationhouse, who he described as a black male, 6’1”, 250 pounds, marine-style haircut, short on sides and higher on top, dressed in uniform, late 20s or early 30s, no facial hair or glasses, called him a “rich white boy from Battery Park” (Allegation B). Officer Kevin Thomas fits this description and corroborated that he interacted with § 87(2)(b) in the holding cell at the 78th Precinct stationhouse and transported him to Brooklyn Central Booking. His name also appears on § 87(2)(b)’s Intoxicated Driver Testing Unit documents as the witnessing officer. § 87(2)(g)

§ 87(2)(b)

AGREED FACTS AND ISSUES IN DISPUTE

While it is not disputed that § 87(2)(b) was pulled over at the intersection of Nostrand Avenue and Shore Parkway in Brooklyn at approximately 2:30am on December 14, 2008 by Officer Curtis

Valley and a second, uniformed male officer, § 87(2)(g)

ASSESSMENT OF EVIDENCE

§ 87(2)(g)

§ 87(2)(b) In his initial complaint, § 87(2)(b) claimed that an officer called him “a fancy playboy with a hot whip”, a statement he did not repeat in either his telephone statement or his CCRB interview. In his verified statement, § 87(2)(b) alleged that Officer Valley said to him, “Oh, you’re a real wiseass aren’t you”. § 87(2)(b) entirely failed to mention this in his initial complaint, and in his telephone statement, claimed that officers asked him, “What are you, a wiseass?” Officer Valley, Officer Foder and Officer Thomas all provided consistent accounts of the incident and denied that they ever called § 87(2)(b) a “wiseass” or that they witnessed another officer call § 87(2)(b) a “wiseass”. § 87(2)(g)

§ 87(2)(b) In his initial complaint, § 87(2)(b) stated that officers called him “a rich spoiled white boy from Battery Park”, and in his telephone statement, § 87(2)(b) claimed that an officer called him a “fat old man, a rich white boy from Battery Park”. The officer who allegedly made this comment to § 87(2)(b) was a black officer at the 78th Precinct stationhouse. § 87(2)(b) was unable to provide the context of the conversation in which this comment was made and whether it was made to him inside the holding cell or in the room where the IDTU was conducted. § 87(2)(b) stated that the same black officer who made this comment was one of the two black officers who pulled him over; however, § 87(2)(b) was pulled over by Officer Valley and his partner that day, Officer Foder, who is clearly white. Officer Valley, Officer Foder and Officer Thomas denied that they called § 87(2)(b) a “rich white boy from Battery Park” or that they heard another officer call him this.

Although § 87(2)(b) admitted that he had had a few drinks earlier that night at a holiday office party, he denied that he was drunk when he was pulled over. § 87(2)(g)

§ 87(2)(b) Officer Valley could not recall specifically why he pulled § 87(2)(b) over, but stated that he believed it was for running a red light, and Officer Foder corroborated that § 87(2)(b) was pulled over for running a red light. Officer Valley, Officer Foder and Officer Thomas all stated that § 87(2)(b) s antagonistic and agitated demeanor, unsteady balance and strong odor of alcohol indicated that he was intoxicated. § 87(2)(g)

Allegation A: Officer Curtis Valley spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged that Officer Valley spoke rudely to him, calling him a “wiseass”. Officer Valley denied calling § 87(2)(b) a “wiseass”, and Officer Thomas and Officer Foder corroborated that Officer Valley did not call § 87(2)(b) a “wiseass”. § 87(2)(g)

Allegation B: Officer Kevin Thomas made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) alleged that an officer made remarks to him based upon race, calling him “a rich white boy from Battery Park”. Officer Valley, Officer Foder and Officer Thomas denied calling § 87(2)(b) “a rich white boy from Battery Park”. § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: